

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2204

IN THE MATTER OF:

Served March 17, 1981

Application of INTERNATIONAL	)	Case No. AP-80-26
LIMOUSINE SERVICE, INC., for a	)	
Certificate of Public Convenience	)	
and Necessity to Perform Charter	)	
Operations Between Points in the	)	
Metropolitan District	)	

By Order No. 2187, served January 26, 1981, and incorporated by reference herein, International Limousine Service, Inc., was granted authority to transport passengers in charter operations between points in the Metropolitan District restricted, as relevant here, to transportation in vehicles with a manufacturer's designed seating capacity for 16 to 21 passengers (including the driver) and against transportation to and from Dulles International Airport and Washington National Airport except as performed in connection with a prearranged charter movement by the same party between at least two other points in the Metropolitan District. Pursuant to that order, Certificate of Public Convenience and Necessity No. 38 was issued on January 29, 1981.

On February 23, 1981, Airport Limo, Inc., a protestant in this proceeding, filed an application for reconsideration of Order No. 2187 specifically concerning the restriction against airport service. The filing of that application acted as a stay upon the effectiveness of Order No. 2187 to the extent that Airport Limo did not consent in writing to the continuation of service. As a result International Limousine is authorized to operate pursuant to the grant of authority in Order No. 2187 except that airport transfer service is restricted to charter groups containing 12 or more passengers. See Order No. 2200, served February 27, 1981, and Compact, Title II, Article XII, Section 16.

On reconsideration, Airport Limo contends that the Commission's rejection of a proposed restrictive amendment accepted by the administrative law judge at the public hearing, requires that the record be reopened to allow Airport Limo an opportunity to demonstrate the consequences of that action. Airport Limo withdrew from the



hearing upon acceptance of the restrictive amendment. The carrier avers that the Commission granted broadened authority (by rejecting the restrictive amendment) without a showing of need for the airport service or a demonstration of the effect that the grant will have on Airport Limo, thus denying it procedural due process.

Airport Limo places reliance for its position on Ward Trucking Corp. v. United States, 574 F.2d 168 (3rd Cir. 1978), wherein the Interstate Commerce Commission (ICC) was directed to conduct further hearings after deleting restrictive amendments accepted by an administrative law judge at a public hearing. Upon acceptance of the restrictive amendments certain protesting parties withdrew from the hearing.

International Limousine filed a reply to the application for reconsideration on March 2, 1981. International Limousine asserts that the action taken was within the proper exercise of the Commission's expertise and authority, and that Airport Limo's withdrawal from the public hearing was voluntary. International Limousine contends that, inasmuch as the airport service granted is restricted as to vehicle size and permitted only where other (non-airport) service is also provided, there was no "broadening" of authority as was alleged by Airport Limo. Furthermore, Airport Limo has made no specific showing that it has been harmed by the adoption of a restriction different from the one accepted at the public hearing, according to International Limousine.

The Commission finds on reconsideration that Airport Limo should be given an opportunity to establish the detrimental effect, if any, resulting from the imposition of the revised airport restriction in Order No. 2187. A public hearing will be scheduled in the matter and International Limousine will be assessed an amount preliminarily estimated to cover the cost of the proceeding. With respect to the Ward case, supra, the Commission believes that it is inapplicable to this proceeding because the Commission here is modifying the restrictive amendment accepted at the public hearing to facilitate administrative enforceability. Ward, 574 F.2d at 170, specifically states that

[i]t is conceded that the Commission is not bound by restrictions which have been stipulated by the parties where such restrictions fail to achieve results consistent with the public interest and inimical to practicable and effective regulation. It is further conceded that the Commission need not accept restrictions in the specific form in which they are offered.

In Ward, the ICC completely deleted the restriction in question rather than merely modify it as was done by the WMATC in this proceeding.

Reconsideration, however, is being granted because Airport Limo was not informed on the record that acceptance of the restrictive amendment at the public hearing and its voluntary withdrawal from the proceeding did not assure that the Commission would accept the restrictive amendment as offered.

THEREFORE, IT IS ORDERED:

1. That the application filed by Airport Limo, Inc., for reconsideration of Order No. 2187, served January 26, 1981, is hereby granted.

2. That Case No. AP-80-26 is hereby scheduled for further public hearing, for the sole purpose of receiving evidence on the matter of the airport restriction, said hearing to commence Tuesday, April 21, 1981, at 8:30 a.m. in the Hearing Room of the Commission, Room 314, 1625 I Street, N. W., Washington, D. C. 20006.

3. That International Limousine Service, Inc., is hereby assessed \$200 pursuant to Title II, Article XII, Section 19 of the Compact, and directed to deliver said amount to the office of the Commission, Suite 316, 1625 I Street, N. W., Washington, D. C., no later than 12 noon, Wednesday, April 15, 1981.

4. That Order No. 2187, served January 26, 1981, as modified in Order No. 2200, served February 27, 1981, will remain in effect until disposition of Airport Limo's application for reconsideration.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS CLEMENT, SCHIFTER AND SHANNON:



GREGORY PAUL BARTH  
Acting Executive Director